UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,854	11/19/2001	John Teloh	SMQ-082CN2/P6396CNT1	9383

959	7590	09/29/2005

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EXAMINER
ABEL JALIL, NEVEEN

ART UNIT	PAPER NUMBER
2165	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/988,854	TELOH ET AL.
	Examiner	Art Unit	
	Neveen Abel-Jalil	2165	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>01 September 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments filed on September 1, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that "Debique et al. does not teach identifying error condition that prevents the initiation of the replication process" is acknowledged but not deemed to be persuasive.

The Examiner maintains that Debique et al. teaches in column 4, lines 12-20, a verification algorithm verifies the objects of a replication. It provides for a testing tool to assure the accurateness of initial replication in order to move forward with the next replication. The Examiner broadly interpreted the argued limitaion "error condition" to read on "reconciliation between two replica" since in the claims of the instant application, a second replica is disclosed thereby giving the Examiner room for interpretation to read on a first replica has taken place and a second replica will be taken a place in the future which is what the prior art teaches. It is understood that a first replica must have taken place in order for a second replica to be initiated. According to Debique's invention column 4, lines 41-67, the algorithm maybe applied to each pair of replicas within the replication topology of the distributed system to verify that all possible paths of the replication have been tested. Data gathering takes place prior to replication to ensure that the changes are properly replicated.

The Examiner would also like to state that there's no disclosure to whether the replica is completed or still taking place.

In response to applicant's argument that "Sicola et al. does not teach generating a second replica. Replaying the log as taught by Sicola does not mean or equate to replicating data in the log to generate a second replica" is acknowledged but not deemed to be persuasive.

The Examiner maintains that Sicola et al. in column 4, lines 1-16, wherein mirroring the replication facility across multiple volumes showing copies of data to be replicated across volumes. Once the replication takes place, a log is generated and is able to be played back as a replica across the multiple volumes. Sicola's invention teaches moving the replication functions form one controller to another by creating a replica locally once a link failure is detected. Then creating a second replica across the remote site thereby teaching the argued limitaion.

In response to applicant's argument on pages 4, 7, and 9 that "Debique et al. does not teach identifying error condition that prevents the initiation of the replication process" is acknowledged but not deemed to be persuasive.

The Examiner is unclear to whether the replication has been initiated, in progress, or completed. The claim language initially states preventing the replication from taking place only to further recite that a second replication has been generated. Therefore, broadly interpreted by the Examiner to read on an iterative process that Debique teaches. In column 4, lines 21-40, Debique teaches halting of replication once a reconciliation of changed objects fails to take place thereby preventing further replication which is broadly interpreted to read on the argued limitaion.

In response to applicant's argument that "Debique et al. and Sicola et al. does not teach instructing each data replication facility of each of the plurality of programmable electronic devices to enter a logging routine upon determination of a link failure" is acknowledged but not deemed to be persuasive.

The Examine maintains that the combination of Debique et al. and Sicola et al. teach the argued limitaion specifically Debique et al. in column 3, lines 48-67, a log is maintained of all objects targeted to be replicated to be used later in the verification process for completeness and accuracy. In Sicola et al. column 3, lines 17-22, and column 3, lines 40-55, a log of all transactions related to replica during link failure is recorded and disclosed.

The recitation of "cannot be" or "can be" found in claims 1, 19, and 31; suggests optional use of the steps to follow thereby is not given patentable weight. It should be replaced by more definite language like "will" or "that" or "to" in accordance with MPEP 2106 & MPEP 2173.05(i).

CHARLES RONES
PRIMARY EXAMINER